

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

MARIA GIL SOTO, *Applicant*

vs.

**ABBOTT LABORATORIES; TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA, adjusted by MATRIX, *Defendants***

**Adjudication Number: ADJ11122688
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 24, 2021

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**CENTRAL COAST INTERPRETERS
CARMENITA & ASSOCIATES
LAUGHLIN, FALBO, LEVY & MORESI**

PAG/pc

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

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| Applicant's Occupation: | Packaging operator |
| Applicant's Age at time of injury: | 46 |
| Date of Injury: | 12/28/2015 |
| Parts of Body Injured: | Right ankle, low back & bilateral wrists |
| Identity of Petitioner: | Lien Claimant |
| Timeliness of Petition: | Timely filed on 7/26/2021 |
| Verification: | Petition was verified |
| Date of Order appealed: | June 23, 2021 |

INTRODUCTION

By timely and verified Petition for Reconsideration, filed July 26, 2021, lien claimant seeks reconsideration of my Findings of Fact that the Court lacked jurisdiction to address a portion of the billed services and that a market rate of \$110 per hour applied to the services to which jurisdiction rested. Defendant has filed an answer. I recommend that the Petition for Reconsideration be denied.

STATEMENT OF FACTS

Applicant commenced work as a packaging operator for Abbott Laboratories (hereinafter referred to as defendant) in approximately 2006. At the time of hire, she was able to perform all aspects of her usual and customary duties without restrictions. At time of injury, defendant was insured by Travelers Property Casualty Company of America, whose claims were adjusted by Matrix Absence Management Inc (hereinafter referred to as Matrix).

On December 28, 2015, applicant twisted her right ankle at work and fell to the ground, [she] injured her right ankle, left lower back and bilateral wrists. She reported her injury and was directed to receive medical treatment. Applicant's claim was accepted and medical and indemnity benefits were provided.

Applicant worked for a period of time on modified duties with restrictions. However, her right ankle symptoms remained pronounced and she was referred to Kevin Miller, DPM for treatment. After diagnostic testing revealed applicant sustaining torn ligaments in her right ankle, Dr. Miller performed right ankle surgery in September of 2016.

Subsequent to her ankle surgery, applicant was referred to Dr. Dana Hess for treatment of her right wrist. After a course of conservative treatment, Dr. Hess performed right wrist surgery in December of 2016.

Applicant returned to work for defendant on light duty in January of 2017. It appears that applicant continues to work for defendant on a full-time basis but with restrictions as to lifting and sitting.

On February 21, 2018, Dr. Peter Mandell evaluated applicant in the capacity of an Agreed Medical Evaluator (AME). In his report of that date, he opined that applicant had reached Maximum Medical Improvement with permanent disability related to the bilateral wrists, right ankle and low back. Applicant would need future medical treatment and she was precluded from full duty.

On April 29, 2019, applicant settled her claim by Stipulations at 34% with future medical treatment provided. Settlement was based upon Dr. Mandell's opinion.

In 2019, Toufan Razi, M.D., applicant's treating physician, recommended participation in a Functional Restoration Program (FRP). Defendant authorized the FRP and applicant attended the program from June 7, 2019 to July 31, 2019.

As applicant required interpretation during the FRP, Central Coast Interpreters (CCI) was retained to provide said interpretation. According to the evidentiary record, CCI billed a total of \$20,197.50 based upon 135.65 hours billed at \$150 per hour

Matrix received all of CCI's billings and reduced some of them to an hourly rate of \$45 per hour. It failed to make payments on others. On none of the billings submitted was payment made in full.

Subsequent to Matrix' actions, CCI requested second bill review on some of the contested charges but not on all of them. CCI did not request Independent Bill Review relative to any of the charges.

CCI filed a Lien for the outstanding charges on March 4, 2020. The amount requested was \$24,281.25, which was inclusive of the original outstanding charges, interest and penalties, less sums previously paid by defendant.

CCI filed a Declaration of Readiness to Proceed on August 24, 2020. CCI retained Michael Carmenta to represent its interests on September 14, 2020. At the Mandatory Settlement Conference on November 22, 2020 before WCJ Christopher Miller, the matter was set for trial before the undersigned.

Trial was held on April 5, 2021. The parties agreed to submit the matter for decision absent testimony. I permitted CCI's representative to file a reply brief to that filed by defense counsel. The matter was submitted for decision as of April 12, 2021.

In my decision, I ruled that I lacked jurisdiction to address 76.15 hour of the total amount billed as CCI failed to request Independent Bill Review. I determined that I did have jurisdiction over 59.5 hour of interpreter services billed and found that a market rate of \$110 per hour applied. I found no merit in lien claimant's contention that a market rate of \$150 should apply. I awarded interest on the billings awarded and deferred action concerning the penalty and reimbursement of lien filing fee issues.

DISCUSSION

Certification of bill reviewers

Lien Claimant places strong [emphasis] on Insurance Code §11761 that sets forth the requirement of bill reviewers to be certified. Lien Claimant contends that since defendant failed to provide clear documentation of certification, the bill reviews completed by defendant's vendor are defective and the bills should be paid in full.

I note that the certifications required to be in existence are held by the Insurance Commissioner and are to be presented upon request. There is no evidence presented by lien claimant that it requested production of any certifications from the Insurance Commissioner. Nor is there any evidence presented that lien claimant conducted any discovery relative to the question of certification or lack thereof.

In addition, there is no evidence or authority presented by lien claimant that the potential lack of any certification automatically voids the bill reviews performed. There is also no authority presented that states that the bill reviewers certification information must be provided in every Explanation of Review (EOR) conducted by that bill reviewer.

It is my contention that lien claimant had every opportunity to conduct discovery relative to every EOR conducted on its billings and failed to do so. To make an unsupported assertion at trial without any supporting evidence fails to meet lien claimant's burden of proof. Further, I am unable to locate any authority that supports lien claimant's assertion that if a bill reviewer is not certified, the EOR conducted by that uncertified bill reviewed are summarily rejected and the entirety of the bill is to be paid in full.

After reviewing the authority presented by the parties in their respective pleadings, I find no merit in lien claimant's contention that the "lack" of

certification as contemplated in Insurance Code §11761 void the bill reviews and makes the billings recoverable.

Jurisdiction/Lack of Fee Schedule

Lien claimant contends that as there is no fee schedule in effect for interpreters, the process for Independent Bill Review (IBR) is inapplicable. Defendant relies upon the recent case of *Meadowbrook Ins. Co. v. Workers Comp. Appeals Bd* (2019) 42 Cal App.5th 432 [Cal.Rptr.3d 325, 84 Cal Comp Cases 1033] in opposition to lien claimant's position.

In *Meadowbrook, supra*, lien claimant argued that the requirements for a second bill review and request for Independent Bill Review did not apply to interpreting services as there was no official fee schedule in place.

The Court of Appeals determined that Title 8 California Code of Regulations §9795.3 served as an applicable fee schedule and that there was no requirement that some future fee schedule to be adopted by the Administrative Director for the regulatory appeal scheme to apply. As there was a fee schedule in place, the Court ruled that lien claimant failure to request second bill review and Independent Bill Review barred recovery of its liens.

Further, the Court of Appeals specifically ruled that the WCAB lacked jurisdiction to hear the parties' dispute.

I relied upon *Meadowbrook, supra* in finding no jurisdiction to address the billings that were not submitted to second bill review and Independent Bill Review. Lien Claimant's appeal offers no clear authority as to why the finding in *Meadowbrook* is incorrect. Defendant's answer also notes that lien claimant has provided no support as to an alternative outcome.

Based upon *Meadowbrook*, I maintain that the court lacks jurisdiction to address any billings beyond the 59.5 hours that I have awarded and that there is no merit in lien claimant's contention.

Market Rate

Defendant relied upon Title 8 of the California Code of Regulations §9795.3(b)(2) in support of its initial payments. That regulation states: "...interpreter fees shall be billed and paid at the rate of \$11.25 per quarter hour or portion thereof, with a minimum of two hours, or the market rate, whichever is greater. The interpreter shall establish the market rate...by submitting documentation to the claims examiner, including a list of recent similar services performed and the amounts paid for those services."

Lien Claimant filed extensive documentation with the Court as to its contended market rate. However, its Exhibit 31 contained limited information concerning the \$150/hour market rate and Lien Claimant Exhibit 32 reflects greater information concerning a market rate of \$110/hour. No information was provided by lien claimant as to any other interpreting service that charges higher than \$110/hour. The competing rates contended make it difficult for the Court to find good cause to award the higher rate.

In addition, lien claimant provided market rate information and documentation concerning two different interpreting services. CCI's Exhibit 33 contains market rate information for Word of Mouth Interpreters (\$110/hour) and Exhibit 34 contains market rate information for California Interpreters Network (\$125/hour).

Further, in the experience of the undersigned, market rate for interpreters at the Oakland District Offices has been held to be \$110/hour. In the case presented as Lien Claimant Exhibit 28, WCJ Christopher Miller awarded a market rate of \$110/hour.

Market rate is not defined as simply what CCI has billed. Further information is required to determine what other interpreting services bill and receive and whether CCI has accepted lower hourly rates in the past.

The seminal case of *Guitron v. Santa Fe Extruder* (2011) 76 Cal Comp Cases 228 (appeals Board en banc) provides guidance on what the reasonable hourly charge for the interpreter services provided should be. The Appeals Board set forth clear markers for how interpreter charges for medical evaluations were covered. Once the lien claimant proved that the services were reasonable required, it still must prove the reasonableness of the charges.

The Appeals Board stated that in addressing the reasonableness of the charges, the court was to weigh "the usual fee accepted (not charged) by the provider, the usual fee accepted by providers in the same geographic area,...[and] any unusual circumstances in the case" *Guitron, supra* at 247, citing *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal Comp Cases 1588(Appeals Board en banc)

There is no evidence submitted that any other interpreting company, other than CCI, bills \$150/hour. There is no evidence submitted as to any specialized skills or training that would support a higher hourly rate than \$110/hour. In addition, the services provided in the FRP do not appear to support a higher rate.

Based upon the exhibits filed by lien claimant, I made the formal finding that while lien claimant successfully rebutted the lower hourly rate set forth in Regulation 9795.3(b)(2), it was not entitled to a market rate of \$150 based upon its own exhibit (that reflected a market rate of \$110/hour) as well as the

information provided by other interpreting services. I find no basis to reverse this finding after reviewing lien claimant's Petition.

For the reasons stated above, I find no merit in any of the contentions raised by lien claimant and recommend that its Petition for Reconsideration be denied.

DATE: 8/6/2021

Jeffrey Friedman

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE